

IN THE UNITED STATES DISRTICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

2003 AUG -4 PM 4:51

STOCK CITY DIV. OFFICE

CESAR JIMENEZ, * No. C01-3068-MWB
SANJUANA JIMENEZ, individually *
and as next best friends of *
LUCILA JIMENEZ, *
and all other similarly situated employees *

Plaintiff,

v.

EMILIO DURAN and *
VICTORIA DURAN d/b/a *
E & V CONTRACT FARMS *

Defendant. *

**AMENDED COMPLAINT AND
JURY DEMAND**

COME NOW the Plaintiffs, Cesar Jimenez, SanJuana Jimenez, individually and as next best friends of Lucila Jimenez and all other similarly situated employees, by and through their attorneys, Mark D. Sherinian, P.C. and Pamela J. Walker, P.C. and Fitzsimmons & Vervaetke Law Firm, P.L.C. and for their cause of action against the Defendants Emilio Duran and Victoria Duran d/b/a E & V Contract Farms and state as follows:

COUNT I

1. The Plaintiffs are former employees of Defendants and bring this action on behalf of themselves and other similarly situated employees of the said Defendants, to recover overtime compensation, interest, liquidated damages, unauthorized payroll deductions, attorney fees, and costs under the provisions of 29 U.S.C. § 201 et seq. (the Fair Labor Standards Act of 1938, as amended), hereinafter referred to as the Act and Chapter 91A, Code of Iowa (2001).

2. Cesar Jimenez is a citizen of Mexico and a permanent resident of Mission, Texas. Mr. Jimenez is a former employee of Defendants.

3. SanJuana Jimenez is a citizen of Mexico and a permanent resident of Mission, Texas. Ms. Jimenez is a former employee of Defendants.

4. Lucila Jimenez is a citizen of the United States and a resident of Mission, Texas. Ms. Jimenez is a minor and Cesar and SanJuana Jimenez are her parents.

5. The other similarly situated individuals represented by the named Plaintiffs are former and current employees of the Defendants.

6. Upon information and belief the Defendants Emilio Duran and Victoria Duran are citizens of the United States and doing business in the state of Iowa as E & V Contract Farms. Defendants employ or have employed the Plaintiffs within the meaning of Section 3(d) of the Act. Defendant employs or has employed the Plaintiffs and other similarly situated employees.

7. Jurisdiction of this action is conferred on this Court by Section 16(b) of the Act and by the provisions of 28 U.S.C. § 1337, relating to "any civil action or proceeding arising under any Act of the congress regulating commerce."

8. At all times hereinafter mentioned, Defendants have been an "enterprise engaged in commerce" which have employees handling or otherwise working in goods or materials that have been moved in or produced for commerce by any person and as defined in Section 203(s) of the Act.

9. The Plaintiffs have regularly rendered services to Defendants in an amount exceeding that which is prohibited by federal law, and Defendants have had full knowledge that the Plaintiffs are regularly rendering services in an amount that exceeds that which is prohibited by federal law.

10. Defendants have failed to compensate the Plaintiffs and other similarly situated employees for such work in excess of that prohibited by the law at rates not less than one and one-half times their regular rate of pay contained in the provision of Section 7(a) of the Act and 29 C.F.R. § 778.225.

11. Defendants' failure to compensate Plaintiffs, and other similarly situated employees for work in excess of that prohibited by federal law at rates not less than one and one-half times their regular rate of pay is willful.

12. The records concerning the number of excess hours worked by Plaintiffs, and other similarly situated employees and the compensation they receive, are in the exclusive possession and control of Defendants, and Plaintiffs are unable to state at this time the exact amount owing to each of them.

WHEREFORE, Plaintiffs, and other similarly situated employees, pray that judgment be entered herein against Defendants in the amount respectively due each Plaintiff, and other similarly situated employees of Defendants for overtime compensation and interest, liquidated damages, and costs under the provisions of the Fair Labor Standards Act of 1938, as amended, and that this Court also allow reasonable attorney fees to be paid by Defendants.

COUNT II

(Violation of Chapter 91A Code of Iowa)

13. Plaintiffs replead the allegations of paragraphs 1 through 12 above as if fully set forth herein.

14. The Defendants violated Chapter 91A of the Code of Iowa by making unauthorized withdrawals from Plaintiffs' payroll checks, specifically withdrawals for rent which had not been agreed to.

15. Upon information and belief, Plaintiffs believe that other employees also had deductions made from their payroll checks without authorization as required by Chapter 91A Code of Iowa (2000).

WHEREFORE, Plaintiffs and other similarly situated employees, pray that judgment be entered against the Defendants in the amount respectively due each Plaintiff and other similarly situated employees of Defendants for unauthorized with withdrawals from their paychecks with interest, liquidated damages and the costs of this action. Plaintiffs also pray for reasonable attorneys' fees to be paid by the Defendants.

COUNT III

(Violation of public policy)

16. Plaintiffs replead the allegations of paragraphs 1 through 15 above as if fully set forth herein.

17. On June 30, 2001, the Defendants terminated the Plaintiffs from their employment.

18. The Plaintiffs were terminated because they had complained when Defendant Emilio Duran refused to allow SanJuana Jimenez to obtain medical treatment for a back injury or allow her husband to take her to a hospital for medical treatment.

19. The termination of the Plaintiffs constitutes a wrongful discharge in violation of public policy.

20. As a proximate cause of Plaintiff's termination of employment they have been damaged.

21. Defendants termination of Plaintiffs was done with malice or reckless indifference to the rights of Plaintiffs and therefore they are entitled to punitive damages.

WHEREFORE, Plaintiffs' pray for judgment against the Defendants in an amount that will fully and fairly compensate them for their damages and for punitive damages in an amount that will punish the Defendants and deter like conduct with interest as provided by law and the costs of this action.

COUNT IV

(Breach of Contract)

22. Plaintiffs replead the allegations of paragraphs 1 through 21 above as if fully set forth herein.
23. In April 2003, the Plaintiffs and the Defendants reached settlement in this matter.
24. The Defendants have refused to complete the settlement agreement.
25. As a proximate cause of Defendants' breach, the Plaintiffs have been damaged.

WHEREFORE, Plaintiffs' pray for judgment against the Defendants in an amount that will fully and fairly compensate them for their damages with interest as provided by law and the costs of this action.

JURY DEMAND

26. Plaintiffs' respectfully request a trial by jury in this matter.

Respectfully Submitted,

SHERINIAN AND WALKER, P.C.

By 

MARK D. SHERINIAN

By

PAMELA J. WALKER

320 Edgewater Building

4200 University Avenue

West Des Moines, IA 50266

Telephone (515) 224-2079

Facsimile (515) 224-2321

FITZSIMMONS & VERVAECKE LAW FIRM,
P.L.C.

By James T. Fitzsimmons (by 203)
James T. Fitzsimmons ISBA13624

5 North Federal Avenue, Suite 200

P.O. Box 1661

Mason City, IA 50402-1661

Telephone (641) 422-0066

Facsimile (641) 422-0086

ATTORNEYS FOR PLAINTIFFS

Original Filed.

Copy to:

Paul Rosenberg
Rosenberg & Associates, P.C.
666 Grand Avenue
Suite 1837
Des Moines, Iowa 50309

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on July 31, 2003

By: U.S. Mail FAX
 Hand Delivered Overnight Courier
 Certified Mail Other

Signature *T. Walker*